

**DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
NOTICE OF PROPOSED REGULATORY ACTION**

MAY 1997

TITLE 13, CALIFORNIA CODE OF REGULATIONS
MODIFY SECTIONS 1158, 1158.3, 1160.2, 1161.2,
1163, 1165, 1165.1, 1167, AND REPEAL SECTION 1168
ROUTES AND CARRIER REQUIREMENTS FOR THROUGH TRANSPORTATION
OF HIGHWAY ROUTE CONTROLLED QUANTITY SHIPMENTS
OF RADIOACTIVE MATERIALS
AND
GENERAL HAZARDOUS MATERIALS REGULATIONS

(97-01)

In response to Governor Wilson's Executive Order W-127-95 directing all state regulatory agencies to effect comprehensive regulatory reform, the California Highway Patrol proposes to amend the General Hazardous Materials Regulations to be consistent with national transportation requirements as required by federal law.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Title 13, California Code of Regulations (13 CCR), Division 2, Chapter 6 contains California Highway Patrol regulations governing the highway transportation of hazardous materials. Article 2.7, Section 1158.3 contains the Time of Day and Day of Week Considerations for the through transportation of highway route controlled quantity shipments of radioactive materials. Article 3, Sections 1160 through 1168, contain the California Highway Patrol's General Hazardous Materials Regulations, e.g., packaging, hazard communication, training, spill reporting and emergency action requirements. In addition to nonsubstantive changes made for clarity and punctuation, the following more substantive changes are being proposed:

(1) Section 1158:

Existing 13 CCR 1158 references Title 49, Code of Federal Regulations (49 CFR) Section 173.403(l) for the definition of highway route controlled quantity shipments of radioactive materials. Subsequent to the adoption of the existing 13 CCR 1158, 49 CFR 173.403 was reformatted by the U. S. Department of Transportation, Research and Special Programs Administration as a result of other actions and eliminated the first level of outlining. This elimination could cause confusion between the reference "l" (lower case of the letter "L") and the numeral "1."

This action is consistent with the mandate in California Vehicle Code (CVC) Section 2402.7 that requires the California Highway Patrol to adopt the same definitions of hazardous materials as contained in 49 CFR. Title 49 CFR 171.1(a)(3) establishes application of federal regulation for

intrastate carriers of hazardous materials when transporting certain materials. Included in intrastate commerce are hazardous materials meeting the definition of hazardous substance which would include all highway route controlled quantities of radioactive materials. As such, this action is a nonsubstantive change.

(2) Section 1158.3:

The title of 13 CCR 1158.3 is being changed from "Time of Day and Day of Week Considerations" to "Carrier, Driver, Training and Reporting Requirements" to better reflect the actual requirements that were contained in 49 CFR 177.825. The reference to 49 CFR 177.825 in 13 CCR 1158 is changed to 49 CFR 397.101. The Research and Special Programs Administration removed 49 CFR 177.825 as being duplicative of the requirements in 49 CFR 397.101, e.g., for carriers to ensure that their drivers are properly trained, that they have a map and route plan for each trip, reporting requirements, that time of day and day of week considerations are taken, and that proper security measures are used for spent nuclear fuel shipments. Adoption of 49 CFR 397.101 would simply allow the California Highway Patrol to continue to enforce federal regulations that the carrier is already subject to under federal law.

(3) Section 1160.2, Subsection (a):

This section incorporates by reference specified portions of 49 CFR. The reference in subsection (a) to the publishing date is being updated to the October 1, 1996, the current printed edition of 49 CFR. By adopting the current federal publishing date, intrastate and interstate hazardous material shippers and carriers will be subject to the same requirements enforced by federal authorities. The uniformity provided by application of the same requirements reduces confusion experienced by the regulated community and enforcement personnel, thereby enhancing commerce, public safety and environmental protection. Alignment of federal and state regulations also makes it easier for the regulated community to obtain the referenced regulations, due to the fact that the Research and Special Programs Administration has various compliance dates contained within any specific published edition of 49 CFR. October 1 is the federally mandated annual publishing date for 49 CFR. Reproductions are readily available from the Government Printing Office and various other companies.

Title 49 U. S. Code (49 USC) 5125 grants the Secretary of Transportation preemption authority over any state hazardous materials transportation requirement, if complying with both the federal requirement and the state or local requirement is not possible; or if the state or local requirement is an obstacle to accomplishing and carrying out the federal requirements. It further clarifies the scope of the Secretary's authority by declaring that the Secretary's ruling would specifically preempt "*. . . a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects, that is not substantively the same as a provision in this chapter [49 USC] or a regulation prescribed under this chapter [49 CFR].*"

The "*covered subjects*" referenced in 49 USC 5125(b) essentially encompass the 13 CCR's General Hazardous Materials Regulations addressed in this rulemaking. Related federal preemption regulations contained in 49 CFR 107.202(d) define "*substantively the same*" as

meaning "... that the non-Federal requirement conforms in every significant respect to the Federal requirement." It is for this reason, and the fact that the federal publishing is so readily available, the California Highway Patrol has elected to incorporate the federal requirements by reference rather than by incorporating the full text into 13 CCR. This reduces confusion and reduces costs on both the regulated community and enforcement agencies.

Furthermore, updating the publishing date will eliminate a carrier or shipper from applying outdated regulations which could result in additional costs to their operations for complying with sections that have been repealed. Subsections (b), (c), (d) and (e) remain unchanged.

(4) Section 1161.2, Subsections (d) and (e):

The last sentence in paragraph (d) and all of paragraph (e) are repealed as the corresponding requirements in 49 CFR were removed as a result of federal rulemakings.

(5) Section 1163, Subsections (c)(2) and (e):

Subsections (c)(2) and (e) of 13 CCR 1163 are being revised to eliminate reference to 49 CFR 177.814 and 177.824, which were removed from 49 CFR as being duplicative. The corresponding requirements are contained in 49 CFR 173.33 and 180.405, which are already adopted in 13 CCR.

(6) Section 1165:

The title for 13 CCR 1165 is being amended to read "[Reserved]" since this section was repealed November 16, 1994. Maintenance of the section title only leads to confusion and unnecessary questions.

(7) Section 1165.1:

The title for 13 CCR 1165.1 is being amended to read "[Reserved]" since this section was repealed February 22, 1982. Maintenance of the section title only leads to confusion and unnecessary questions.

(8) Section 1167:

The reference to 49 CFR 177.853 is amended to read 177.854, since 49 CFR 177.853 was removed from 49 CFR as being duplicative. 49 CFR, Part 177, Subpart D now starts with 49 CFR 177.854.

(9) Section 1168

This section is being repealed since referenced 49 CFR 177.818 was removed by the Research and Special Programs Administration in a final rule issued on May 30, 1996, as this requirement is already addressed in 49 CFR Part 172, Subparts G and H. Subparts G and H of 49 CFR, Part 172 are already adopted by reference in 13 CCR 1161.6 and 1161.7.

PUBLIC COMMENTS

Any interested person may submit written comments on the proposed action via facsimile at (916) 446-4870 or by writing to:

California Highway Patrol
Commercial Vehicle Section
ATTN.: Steve Brown/Paul Horgan
PO Box 942898
Sacramento, CA 94298-0001

Written comments will be accepted until 4:45 PM, June 30, 1997.

No Public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the California Highway Patrol, Commercial Vehicle Section no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The California Highway Patrol has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based, and the proposed regulation text. Requests to review or receive copies of this information should be directed to the California Highway Patrol at the foregoing address, E-mail PHorgan@CHP.CA.GOV, by facsimile at (916) 446-4870 or by calling the California Highway Patrol Commercial Vehicle Section, at (916) 327-3310. Facsimile requests for information must include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state and zip code), and a daytime telephone number in case the information is incomplete or illegible.

QUESTIONS

Any questions concerning the contents of the proposed regulations 13 CCR 1158 and 1158.3 should be directed to Officer Jim Epperson at (916) 327-3310. Any questions regarding the remaining sections should be directed to Mr. Steve Brown or Mr. Paul Horgan.

ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the California Highway Patrol may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or nonsubstantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

FISCAL AND ECONOMIC IMPACT

The California Highway Patrol has determined that this proposed regulatory action: (1) will have no affect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) involves no increased nondiscretionary or reimbursable costs or savings to any local agency, school district, state agency or federal funding to the state; (4) will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California; (5) will not have an adverse economic impact on the competitiveness of this state to retain businesses or the competitiveness of California businesses with those in other states, as the majority of other states (especially neighboring) have already adopted these or similar requirements; and (6) will not result in any significant cost to private persons or entities.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(7), the California Highway Patrol must determine that no alternative, including the no project alternative, considered by the California Highway Patrol would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The California Highway Patrol invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

PLAIN ENGLISH STATEMENT

Preparation of the proposed amendment included consideration of the "Plain English" requirement. Any technical terms that may be unfamiliar to the intended users, are defined and explained. The California Highway Patrol has determined that these regulations may effect small business and will make the regulations written in plain English available from the person named in this notice.

AUTHORITY

This regulatory action is being taken pursuant to 2402.7, 33000, and 34501 CVC.

REFERENCE

This action implements, interprets, or makes specific 2402.7, 33000, and 34501 CVC.

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
L. DENNO, Chief
Enforcement Services Division